IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

CRIMINAL APPEAL No.233 OF 2002

Kasayi @ Saminathan ... Appellant

-Vs-

State, by
The Inspector of Police,
Latheri Police Station. ... Respondent

Criminal Appeal preferred under Section 374(2) of the Code of Criminal Procedure for the relief as stated therein.

For appellant : Mr.V.Sairam

For respondent : Mr.E.Raja, A.P.P.

:JUDGMENT

(Judgment of the Court was delivered by V.KANAGARAJ, J.)
The above Criminal Appeal is directed against the judgment of conviction and sentence dated 13.6.2000 rendered in S.C.No.40 of 1999 by the Court of Additional Sessions Judge, Vellore thereby convicting the appellant for the commission of the offence under Section 302 IPC and sentencing him to undergo life imprisonment and also to pay a fine of Rs.1,000/= in default to undergo further Rigorous Imprisonment for a period of three months.

2. The case of the prosecution is that the deceased Selvam and P.W.2 Kannan are brothers and they belong to the same village of Vadavirinchipuram where from, the appellant/accused also hails; that on 14.8.1 998, which was a Adi Friday, many people took 'kavadi' and there was a kavadi procession in the village in which the deceased Selvam performed 'Silambattam'; that at about 7.30 p.m., when the procession was going on, a stranger came in his scooter and P.W.6 Arumugam intercepted him and chid him for having come in that way and the deceased Selvam intervened and told P.W.6 to leave the scooterist for which P.W.6 abused the deceased Selvam as a drunkard and told him that it was none of his business, which was witnessed by P.Ws.2,3 and 5 and others.

3. The further case of the prosecution is that after the procession, the deceased Selvam complained against the conduct of P.W.6 to one Murugan,

the brother-in-law of P.W.6, and at that time, the appellant/accused intervened and shouted at the deceased Selvam calling him a bastard, incited others to give him a blow and send him away and enraged by the said act of the appellant/accused, the deceased Selvam slapped him, which was also witnessed by P.Ws.2,3 and 5 who separated both of them; that by this time, P.W.4 Gnanasundari, the wife of the deceased Selvam came there and the accused shouting that he would not leave him without killing him, came towards the deceased Selvam and stabbed him with a pen knife on his left chest and fled away and when the deceased was taken to the Government Pentland Hospital, Vellore, he was declared dead by the Duty Doctor P.W.8 Arunan and hence the accused was charged for the offence punishable under Section 302 I.P.C.

4. On the above charge, since the appellant/accused pleaded not guilty, the trial Court would conduct the trial wherein on behalf of the prosecution, whose duty it is to prove the guilt of the accused beyond all reasonable doubts, it would examine 14 witnesses for oral evidence as P.Ws.1 to 14. P.W.1 is the Village Administrative Officer, who was met by P.W.2 and his son in the midnight on the date of occurrence and lodged a complaint with him, which was recorded by P.W.1 as Ex.P.1 and then he went to Vadavirinchipuram and enquired P.Ws.3 and 5 about the occurrence and on 15.8.1998 at 4.00 a.m., P.W.1 went to the respondent Police Station and with his endorsement Ex.P.2, handed over Ex.P.1 to P.W.13 S.I. Ashokkumar who registered the case and sent Express F.I.R. through P.W.11 Head Constable and P.W.11 handed it over to the concerned Magistrate and copies to the superior police officers. P.Ws.3 to 6 are the alleged eye-witnesses to the occurrence among whom P.W.4 Gnana Sundari is the wife of the deceased Selvam; P. W.7 is the Photographer, P.W.8 is the Doctor who examined the deceased and declared him dead and issued Ex.P.7 wound certificate and Ex.P.8 the death intimation; P.W.9 is the Doctor who conducted the postmortem and issued Ex.P.10 post-mortem report; P.W.10 is the Head Clerk of the Court of Judicial Magistrate No.V, Vellore, P.W.11 is the Grade-I Police Constable, who handed over the F.I.R. to the concerned Magistrate and copies to the superior police officers; P.W.12 is the Grade-I Police Constable, P.W.13 is the Sub Inspector of Police and P.W.1 4 is the Inspector of Police and the Investigating Officer.

5. So far as the documentary evidence is concerned, the prosecution would mark 19 documents on its behalf as Exs.P.1 to P.19. Ex.P.1 is the complaint dated 15.8.1998, Ex.P.2 is the endorsement made by P.W.1 in Ex.P.1 dated 15.8.1998; Ex.P.3 is the rvation mahazar dated 15.8.1998, Ex.P.4 is the mahazar for recovery of M.Os.1 and 2, dated 15.8.1998, Ex.P.5 is the admissible portion of the confession statement of the appellant/accused dated 15.8.1998, Ex.P.6 is the mahazar for recovery of M.O.3, Ex.P.7 is the wound certificate of the deceased dated 14.8.1998, Ex.P.8 is the death intimation dated 14.8.1998, Ex. P.9 is the Post Mortem Requisition dated 15.8.1998, Ex.P.10 is the Post Mortem Certificate dated 15.8.1998, Ex.P.11 is the requisition to send the properties to Chemical Examiner, dated 31.8.1998, Ex.P.12 is the letter from the Court to the Chemical Examiner dated 1.9.1998, Ex.P.13 is the Biol Report dated 24.11.1998, Ex.P.14 is the Chemical Report dated 30.10.1998, Ex.P.15 is the Serologist Report dated 2.3.199 9, Ex.P.16 is Form-95 dated 15.8.1998, Ex.P.17 is the FIR dated 15.8.1998, Ex.P.18 is the

rough sketch dated 15.8.1998 and Ex.P.19 is the inquest report dated 15.8.1998. Besides these, eight material objects would be marked as M.Os.1 to 8. No oral or documentary evidence has been adduced on the side of the defence.

6. The Court of Additional Sessions Judge, Vellore, in consideration of the above evidence, has found the accused guilty of the offence charged and has sentenced him to undergo life imprisonment further sentencing him to pay a fine of Rs.1,000/= in default to undergo a further Rigorous Imprisonment for a period of three months. Aggrieved, the appellant/accused has come forward to prefer the above Criminal Appeal on grounds such as (i) that the Court below erred in relying on the evidence of P.W.4 who has been inconsistent to that of the prosecution case; (ii) that the very seizure of the occurrence weapon cannot at all be believed for the reason that the same was seized very much subsequent to the examination of the Medical Officer by the Investigating Officer and the alleged examination of the Investigating Officer was strange with reference to the weapon; (iii) that the Court below failed to see the lacuna in the prosecution case that the appellant who is an aged man of 60 years could not be caught red-handed or subsequent to the occurrence; (iv) that the Court below failed to see the inordinate delay in registering the FIR and (v) that at any rate, the Court below ought to have seen that even assuming that the entire occurrence to be true, the offence committed by the appellant would be only a 'culpable homicide not amounting to murder' in view of the clear case of the prosecution that there is enough provocation on the part of the deceased and the act of the accused was not a premeditated one.

7. During arguments, the learned counsel for the appellant, besides narrating the facts of the case and placing reliance on the grounds of appeal, would also submit that there is inordinate delay in registering the FIR since the alleged occurrence is at about 8.30 p.m. on 14 .8.1998 and the FIR was lodged at 4.00 a.m. on 15.8.1998. The learned counsel would further submit that the evidence on record would show that it all happened on sudden provocation and there is no premeditation on the part of the accused and P.W.9, the Post Mortem Doctor, also found only one injury on the body of the deceased and would pray the Court to allow the above appeal or in the alternative to convert the conviction to one under Section 304-II IPC. In support of his argument that the conviction could be altered to one under Section 304-II IPC, the learned counsel for the appellant would cite a judgment of the Honourable Apex Court delivered in MAVILA THAMBAN NAMBIAR vs. STATE OF KERALA reported in 1997(1) Crimes 72 (SC) wherein it is held:

"When the accused had given one blow with a pair of scissors on the vital part of the body of deceased, it would be reasonable to infer that he had knowledge that any injury with the pair of scissors on the vital part would cause death though he may not have intended to commit the murder and therefore his conviction altered from Section 302 IPC to one u/sec.304 Part II of the IPC."

8. On the contrary, the learned Additional Public Prosecutor appearing on behalf of the respondent would submit that the Court below has considered the entire facts and circumstances of the case in the right perspective and has arrived at an irresistible conclusion, which does not

require any interference by this Court and would pray to dismiss the above Criminal Appeal.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the appellant and the respondent State as well, this Court is able to find that the occurrence had taken place on 14.8.1998 when there was a ' kavadi' procession in the village which had been participated by the deceased himself playing 'Silambattam' and while so at 7.30 p.m., on a petty quarrel that erupted in between P.W.6 Arumugam and the deceased Selvam due to the stopping of a scooterist who was passing that way, the appellant supporting the cause of P.W.6 Arumugam started quarreling with the deceased and also used abusive words as a result of which the deceased had slapped him, enraged at which, the appellant challenged the life of the deceased and after a little while, came to the spot and stabbed him with M.O.3 pen knife on his left chest in the presence of P.Ws.2,3 and 5 and fled away; then, P.Ws.2,3 and 5 went to the rescue of the deceased and in spite of the deceased having been taken to the Government Pentland Hospital, Vellore, he was declared dead by the P.W.8 duty Doctor and hence the accused was charged for the offence punishable under Section 302 IPC.

10. The trial Court has conducted the trial, wherein the prosecution, whose burden it was to establish the case beyond all reasonable doubts, had examined 14 witnesses, marked 19 exhibits besides marking 8 M.Os. as it has been vividly brought forth in paragraphs 4 and 5 supra, thus giving sufficient and reasonable opportunities for both to exhaust their remedies and in appreciation of the facts and circumstances, as put forth on the part of the prosecution while projecting its case before the trial Court and the evidence made available on record, the trial Court has ultimately found the appellant/accused guilty of the offence charged and has passed on the sentence of imprisonment for life with the fine of Rs.1,000/= in default to undergo RI for a period of three months and it is this judgment which is under challenge before this Court in the above criminal appeal.

11. Though generally testifying the validity of the entire judgment, the grounds were brought forth and arguments advanced, ultimately, the learned counsel for the appellant would confine himself to convert the conviction of the appellant from Section 302 IPC as it has been arrived at on the part of the trial Judge to Section 304-II IPC and for a lenient punishment mainly on ground that there was no premeditation or pre-thinking on the part of the appellant and in a sudden flare-up and having got enraged at the beating of the appellant by the deceased, he had inflicted the stab injury on the left side chest of the deceased. The learned counsel would further point out that it is a case of single stab injury inflicted and would also cite the judgment of the Honourable Apex Court, cited supra, reported in 1997(1) Crimes 72 (SC), wherein the Honourable Apex Court has very clearly held that in cases of the accused giving a single blow on the vital part of the body of the deceased, it would be reasonable to infer that he had only knowledge that any injury with the weapon of that sort on the vital part would cause the death though he might not have intended to commit the murder and on such grounds altered the conviction from Section 302 IPC to one under Section 304-II IPC. Since the

above cited case squarely applies to the facts of the case in hand, it is also desirable on the part of this Court to arrive at the same conclusion and hence the following judgment:

In result,
(i) the above criminal appeal is allowed in part.
(ii) The conviction and sentence passed against the appellant/ accused for the offence punishable under Section 302 IPC is set aside. Instead, he is found guilty of the commission of offence under Section 304-II IPC and is sentenced to undergo Rigorous Imprisonment for a period of seven years.

Index: Yes
Internet: Yes

Rao

To

1. The Additional Sessions Judge,
Vellore.

2. -do - through the Principal Sessions Judge,
Vellore.

3. The Inspector of Police,
Latheri Police Station.

4. The Superintendent,
Central Prison,
Vellore.

5. The District Collector,
Vellore.

6. The Director General of Police,
Chennai-4.

7. The Public Prosecutor,
High Court,
Chennai.

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